

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

CHARLES ANTHONY BROOKS,

No. C 16-1678 RS (PR)

Petitioner,

**ORDER DISMISSING PETITION
WITH LEAVE TO AMEND**

v.

SAVAS JAMES LOUKEDIS,

Respondent.

This federal action was filed as a petition for writ of habeas corpus, that is, as a challenge to the lawfulness or duration of petitioner's incarceration. A review of the petition, however, shows that respondent is not the warden of the prison in which petitioner is housed, that is, the traditional person an inmate sues for release from confinement, but rather the state-appointed defense attorney who represented him.

This raises the question whether petitioner seeks release from incarceration or money damages from his attorney. The first must be brought as a habeas petition. The second as a civil rights action under 42 U.S.C. § 1983. Petitioner must decide which sort of action he is pursuing and then inform the Court. If he wishes to challenge his convictions, he must name in his amended petition the warden of his current prison as the sole respondent. If he wishes

1 to sue his defense attorney, he must file a separate action under § 1983.

2 Accordingly, the petition is DISMISSED with leave to file an amended petition on or
3 before June 20, 2016. **No extensions of time will be granted.** The amended petition must
4 include the caption and civil case number used in this order (16-1678 RS (PR)) and the words
5 FIRST AMENDED PETITION on the first page. Because an amended petition completely
6 replaces the previous petition, petitioner must include in his amended petition all the claims
7 he wishes to present. He may not incorporate material from the prior petition by reference.
8 Failure to file an amended petition in accordance with this order will result in dismissal of
9 this action with prejudice for failure to prosecute under Federal Rule of Civil Procedure
10 41(b).

11 The Court notes petitioner has provided updated information on his ability to pay the
12 filing fee, which the Court construes as a renewed motion to proceed *in forma pauperis*
13 (“IFP”). Because this new information shows that petitioner lacks the current ability to pay
14 the filing fee, his motion to proceed IFP is GRANTED.

15 **IT IS SO ORDERED.**

16 DATED: May 23, 2016


RICHARD SEEBORG
United States District Judge